

1942

Department of Revenue

OFFICE Board of Revenue

STATION Madras

Mis: No 39

Dated 5th January 1942

L.S. 788/41

Special

Issue today

without fail

Proceedings above
29/1
28/1

Ans
6 JAN 1942
28/1

Pages in the file

(SUBJECT.)

Suits - Probate. (S. Kanara). District Court.
late Mx

O. P. No. 62 of 1940. Estate of J. M. Rodrigues.

Action under Sec: 194(4) of the C. F. Act. R. I. A 88/41 -
adopted by the Court

Rate of Capitalisation. Appeal or

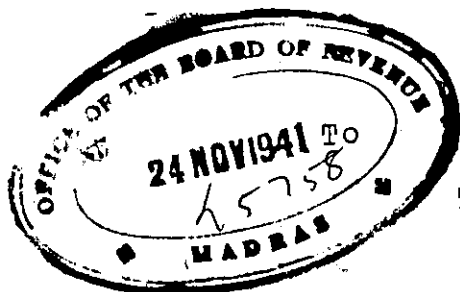
Ref.B4-7234/41.

South Kanara Collector's Office,
Mangalore, 19th November, 1941.

From

M. V. Subrahmanyam, Esq., I.C.S.,

Collector of South Kanara,



The Secretary to the Board of Revenue,

Land Revenue & Irrigation, Madras.

W. K. Subrahmanyam
Sir,

Probate - District Court - South Kanara - O.P.62/40 -
Estate of late Mr. J. M. Rodrigues - Enquiry into true valuation - R.I.A.88/41 - Rate of capitalization adopted by the Court - taking up on appeal - Report submitted.

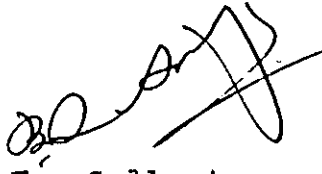
In calculating the value of immovable properties in Probate cases, the practice prevailing in this District was to capitalize the net income from the properties at 5%. The District Court, South Kanara has adopted variously 5%, 5½% and 6% in such cases, as there was no definite principle governing the matter. To have the matter placed on an intelligible and definite footing, I referred the Government Pleader, Mangalore, some time ago, to the mode of valuation of properties in land acquisition cases mentioned in B.P.Nos. Mis.967, dated 28.3.1938 and Rout.3246, dated 5.8.38 (copies enclosed) and asked him if the principles involved therein can be pressed in Court in cases of valuation of properties in probate cases. The Government Pleader, Mangalore, agreed that the principles were sound and applicable and said that he would urge them in Probate cases.

The Government Pleader, Mangalore, accordingly urged the principles referred to in the B.Ps. cited above in O.P.Nos.66/38 converted into O.S.2/40 on the file of the District Court, South Kanara and got a decision in consonance with the said principles. I enclose a certified copy of the order of the Court for perusal. In O.P.62/40, the Court has however declined

-to adopt these principles. In some other cases also, viz., in O.P.Nos.42/40 and 94/40 the Court has declined to adopt these principles.

The Government Pleader, Mangalore says that as the rate of capitalization arises in all probate cases and involves a principle of great importance, it is worthwhile to take up the matter to the High Court in appeal. I agree with him for it is desirable, as I have indicated above, to have the matter placed on a definite and intelligible footing. In this connexion I enclose a copy of the Mangalore Government Pleader's letter Ref.A-1013-41, dated 28.10.1941 and the grounds of appeal furnished by him. 1013-41
p 74

I enclose certified copies of the order and decree of the Court in R.I.A.88/41 (O.P.62/40) now in question along with this office D.Dis.5313-40, dated 22.6.1941 for perusal. 1013-41 (L)
N
I request that the Board may be pleased to request the Government Pleader, Madras, to file an appeal against the order of the District Court, South Kanara, in R.I.A.88/41 (O.P.62/40) on the lines suggested by the Government Pleader, Mangalore. The time for appeal expires on 7.1.1942. 1013-41 (L)


For Collector.

19.11.41

Proceedings of the Board of Revenue, Madras.
B.P. Mis. 967 dated 28-3-1938.

C.A.Henderson Esq., C.S.I., V.D., I.C.S., Commr. of Land Rev.
and Sett.

Land Acquisition -Proprietary villages -Melvaram value -
Calculation -Land Acquisition Manual -amendment issued.

Read the following Paper:

Letter from the Collector of Kistna, R.C.B.l.A.2695-37
dated 9th October 1937.

Board's Ref. No. I-4649-37-1 dated 21-12-37.
G.O.No.Ms. 591 Rev.dated 4-3-1938.

Land Acquisition -Proprietary villages -Melvaram villages -
Melvaram value -Calculation -Land Acquisition Manual -amendment -
Board's proposal -approved.

Read the following:

From the Board of Revenue (L.R.& S.) Ref.No. I-4649-37-1
dated 21-12-37.

O r d e r.

The Government direct that paragraph 3 of Chapter XVII of
Part III of the Land Acquisition Manual be amended as shown in
Appendix I to this order.

2. The Superintendent, Government Press is requested to
print appendix I to this order as the 60th list of corrections
to the Land Acquisition Manual and to distribute copies of the
correction slips as indicated in Appendix II after recovering
the cost wherever necessary.

(By order of His Excellency the Governor)

B.G. Holdsworth,
Secy. to Government.

Appendix I.

60th list of corrections to the Land Acquisition Manual -Part
III - Chapter XVII -Paragraph 3.

For the sixth sentence substitute the following:

"If there are no such sales of similar lands, the only
method of valuing the interest of the landholder is to
capitalise his net income from the land. For this purpose,
the gross income of the landholder from the land which is being
acquired should first be ascertained, taking into consideration
the average remissions if any and the following deductions
should be made therefrom viz.

(1) the cost of collection and administration which may
normally be taken as 10% of the gross income; (this

percentage may be varied according to the circumstances of individual cases.); and

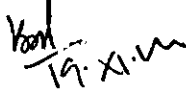
(2) the proportionate amount of peshkash or quit-rent payable by the landholder to the Government in respect of the land acquired.

The resultant figure will be the net income of the land-holder.

The rate of interest on and the market price of gilt-edged securities prevailing on the date of the notification under section 4 (1) of the Land Acquisition Act should also be ascertained. The capital sum which when invested at the above market price and rate of interest, will produce an annual return equal to the net income as defined above should be calculated and 15 percent thereof should be added for compulsory acquisition and the resultant figure should be awarded as compensation for the interest of the landholder".

(True copy)


For Collector.


19. XI. 19

Proceedings of the Board of Revenue, Madras.

C.A. Henderson, Esq., C.S.I., V.D., I.C.S., Commr. of Land Revenue and Settlement.

Resolution Rt. 3246 dated 5th Aug.1938.

Sub: Land Acquisition -Proprietary villages -Melvaram value - calculation -Data-market price and rate of interest on gilt edged securities -source of information -orders passed.

Read the following:

Letter from the Collector of West Godavari No.Roc.B. 2198-38 dated 26th May 1938.

From the Reserve Bank of India Refce. 195 dated 19th July 1938.

Resolution.

With reference to the amendment ^{of} paragraph 3 of Chapter XVII of Part III of the Land Acquisition Manual sanctioned in G.O.No. Ms. 591 dated 4-3-38 communicated in B.P. No.Ms. 967 dated 28-3-38 the Collector of West Godavari enquires from which source information should be obtained regarding the rate of interest on and the market price of gilt-edged securities prevailing on the date of the notification under section 4 (1) of the Land Acquisition Act. The Collector is informed that the Manager of the Reserve Bank of India (Securities Department), Madras will furnish the Land Acquisition Officers with the market price of and rate of interest on gilt-edged securities on any specific date on receipt of a requisition from them.

(True Extract)

Sd/- K.P. Krishnan Nayar,
Asst. Secretary.

(True copy)


For Collector.

Kom
15.XI.41

Grounds of appeal furnished by the Government
Pleader, Mangalore.

1. The lower court has not adverted in its order to the contention that capitalization at 5% was reasonable on the principles enunciated in I.L.R. 1938 M 431.

2. The lower court ought to have followed its previous order in ✓ O.S. No.2/40 on the rate of capitalization.

3. Even where the properties are outside the Municipality the lower court should have thought that 5% capitalization would only be fair having regard to the current rate of interest as disclosed by the rate on Government securities.

Sd/- M.K. Nambyar,
Government Pleader.

(True copy)


For Collector.



Letter-from the Government Pleader, and Public
Prosecutor, Mangalore.
To-the Collector of South Kanara, Mangalore.
Dated-Mangalore, 28.10.1941.
No.-Ref.No.A.1013-41.

Probate - District Court - South Kanara - O.P.No.
62/40 - Estate of late Mr. J. M. Rodrigues - Enquiry into
valuation - R.I.A.No.88/41 - Method of valuation of landed
properties - Certain information - Furnished.

Your Ref.B4-7234-41, dated 23.10.1941.

It is now some time the Court has been abandoning
the principles in I.L.R.1938 M 431 in capitalizing^{-ation} in pro-
bate cases. It may be recalled that the first case after
the recess whereⁱⁿ the contention was advanced was O.P.
66/38 converted into O.S.No.2/40. The decision[✓] was very
likely^a surprise to the opposite side. The lands concern-
ed were mostly if not wholly - I am stating from memory -
outside the Municipality. After hearing the arguments the
Court reserved judgment and passed a considered order apply-
ing the principles of the decision to probate cases.

2. The subsequent cases argued were O.P.42/40, O.P.
94/40, O.P.[✓]62/40 now under reference, and O.P.27/41 pending
judgment. By the time these cases came up the petitioners
were better prepared to meet the contentions based on that
decision. It was urged (a) that principles of the Court
Fees Act and not of the Land Acquisition Act were applicable,
(b) under Section 7 Cl.V(c) of the Court Fees Act the rate
of capitalization with reference to income was 15 times the
net profits or 6 and 2/3%, (c) that interest on Government
securities might be an indication of the nature of commercial
invest^{ment}s, in Commercial centres but hardly influenced
land values in remote districts, (d) that under the Civil
Procedure Code and Negotiable Instruments Act 6% was the
interest provided, and should therefore be the guide to
capitalization, (e) and that lands outside the Municipality

should be capitalized differently from those within, according to the nature of the holding, yield and extent.

3. I have sought to counter these arguments in my own way: (a) Both in land acquisition and in probate cases the question to be determined is the market value of the property, hence the decision in 1938/^{M 431} and the Court's own judgment in O.S.2/40 were conclusive, (b) Section 7 Cl.V(e) of the Court Fees is not market value but notional value; (c) land investments stand on the same footing as other investments influenced only by the outturn of interest, (d) six per cent awarded by C.P.C. or Negotiable Instruments Act is only on money, (e) the situation of the land affects its price because of the difference in the price of the produce, and not of different rates of capitalization. When the price of paddy is Re.0.8.0 a para in West Eleri, and Re.1/- in Mangalore an acre of land yielding 50 paras will fetch double the price in Mangalore to that of similar land in West Eleri. So long as the price computed is that prevailing in the locality, there is no justification for varying the rate of capitalization.

4. The Court has apparently been impressed with the arguments of the petitioners, and has veered round to its old view. But it had already held in O.S.2/40 that 1938 M 431 was applicable. 9-11 g (L) The orders in all the subsequent petitions aforesaid neither advert to or discuss these contentions or decisions at all. In all these O.Ps. the capitalization has been at 5%. In O.P.No. 42/40 the ground given was the nature of the land that it consisted of mulgenis and mango grooves - though I had urged that mulgeni land was a permanent as muli land, and so long as mulgeni was deducted capitalization could not vary. In O.P.No.94/40 the land was stated to be subject to floods. In O.P.62/40 now under p/p1-7 (L) reference the reason given is "properties are outside the Municipality" and 6% adopted by the Respondent (petitioner in the main O.P.) for lands and buildings would be fair. O.P.27/41 still awaits judgment.

5. The Court has undoubtedly gone back on its view in

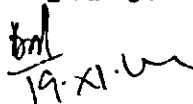
pp 9-11 (2)

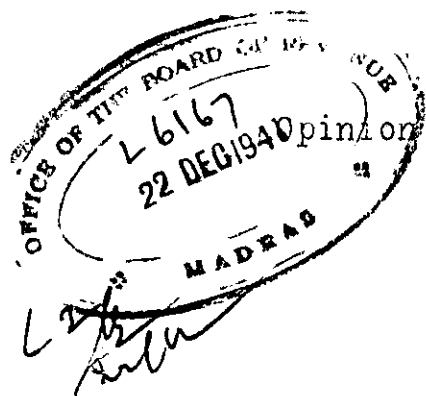
O.S.No.2/40 where most of the lands if not wholly were situated beyond the Municipality. It seems to me that as the rate of capitalization arises in all Probate cases, and involves a principle of great importance it is worthwhile to take the matter to the High Court in revision. It is not too late to file a revision petition against the order in O.P. 62/40 as we have three months' time from the date of the order 7.10.1941, and I still feel with all deference to the learned Judge that his first view is right.

6. As to your remark that my last letter was 'not clear enough' to say why the court took this view, I have to state that your query was confined only to whether I had urged in court the principles mentioned in the High Court decision. I may perhaps add that the observations at the end of the judgment were appealed to by the petitioner to support the claim of ten per cent for collection charges.

(True Copy)


For Collector.


19.11.41



Opinion No. 53.

Suits - Probate - (South Kanara) - District Court - O.I.No. 62/40 - Estate of late Mr. J.M. Rodrigues - Action under Sec. 19 H (4) of the Court-fees Act - R.I.A.88/41 - Rate of capitalisation adopted by the Court - appeal filing.

Board's W.C. L.5758/41, dated 9--12--41.

No appeal lies against the order of the District Judge and *in* view of Sub-clause (7) of Sec. 19^H of the Court-fees Act and the decision in *p 205 of BK 163.* put up— I.L.R. 56 Madras 744, the High Court is not likely to entertain even a revision petition. I am therefore of opinion that no appeal or revision petition can be filed in the High Court with any chance of success.

K. K. R. S. S. S.
20. 12. 41

Madras, 20-12-41.

Government Pleader.

1.3. The records received are herewith returned.

DRAFT FOR APPROVAL. (E.M.G)

	Date.	Initials.	SUBJECT:—
When received for fair copying ..	5/1	ms	Suits. Probate - (S. Kanara). District
When copied ..	5/1	ms	Court. o.p. No. 62 of 1940. Estate of late
When examined..	5/1/42	ms	Mr. J. M. Rodrigues. Action under Sec. 19
When signed ..			H (4) of the C.F. Act. R.I.A. 88/41. Rates
When despatched.			Capitalisation adopted by the Court.

READ AGAIN _____, dated Appeal - Filing - Negative

" " _____, dated _____ 19__

READ ALSO:—

p/p 1-2 of No. _____ From the Coll^y of S. Kanara ^{Ref. B4} No. 7234/41, dated 19/11/1941 Q

p/p 13 of " " G.P. Madras Opinion No. 53820/12/1941 A

" " " " " " " " 19__

Order Ms. No. 39, dated 5th January 1941

Resolution Res.

p/p 13 of

The opinion of the Govt Pleader Madras is communicated to the Collector of S. Kanara. The Board agrees with Govt Pleader that ^{in view of} no appeal need be filed against the decision of the District Judge, South Kanara in o.p. No. 62 of 1940.

To the Collector of S. Kanara
(with Encls)

5/1/42
5/1/42
5.1.42

- 1. Copy of the judgment and order in I.A. No. 88/1941 in o.p. 62/40
- 2. D. No. 5313-40 & 22-6-1941.

put up in the file

As per Govt Pleader Madras
5/1/42

Appeal time expires 7-1-1942

J.S.
with a book

Suits - Probate - (S. Kanara) - District Court -
O.P. No. 62/1940. Estate of late M^r. J. M. Rodrigues.
Action under Sec: 194(4) of the C.F. Act - R.I. A. 88/4
- Rate of Capitalisation adopted by the Court
Appeal - Filing of. Sanction.

L. 5758/41

Ref. B.4.7234/41 & 19.11.41 from the Coll^r of ^{S. Kanara} ~~Madras~~.

To Joint Secy

The Collector requests the Board^{Sanction} to

file an appeal in the High Court, Madras, against
the order of the Dist. Court in R.I. A. 88/41 (O.P. 62/40).

In the valuation statement filed

by the petitioners for probate certain properties
comprised in the estate of the testators have been
undervalued and as the petitioners ~~had~~ not
accepted the Collector's valuation, the Collector
moved the Court under Sec: 194(4) of the C.F. Act
to hold an enquiry into the true value of the
estate. The District Judge ~~adopted~~ ~~adopted~~ ~~adopted~~
~~and~~ ~~in probate~~ Capitalised the net income
from the properties at 5%, 5 1/2%, and 6% ^{in probate cases} as there
was no definite principle governing the matter.
The point at issue is how to arrive at the Capital
value of the properties in maffasal.

According to the principle enunciated
in M^r. Justice Gentle's judgment the house property
in Madras is Capitalised at 20 times nine
months' rental. ~~The same procedure may also~~
~~be adopted in arriving at the Capital value of~~
~~house property in maffasal in maffasal~~

As regards landed property
comprised in estates, the rate of Capitalisation
for purpose of Court fee ^{in probate cases} does not appear to be
uniform and there is no definite principle
governing it.

Dist. Judges orders, (L)

B.P. No 9678 28.3.38 (P)

Rt 3246/S.8.38(R) pp 1-2 of

Coll^r's file - (N)

Mis: 27928 10.10.40 (F)

19058 12.7.38 (K)

pp 1-2 of

tr 1-3 of (L)

tr 5-7 of (N)

tr 55 of (V)

L. 205 K. 103

In land acquisition cases the principle of Capitalisation mentioned laid down in the amendment ^{in the} L.A. Manual issued in B.P. No. 967 & 28/3/38 should be followed. The rule of the no. of years purchase is not a theoretical or legal rule but depends upon the economic factors such as the rate of interest on and the market price of gilt edged Securities prevailing at the time of acquisition. Please see B.P. Rt. 3246 & 5.8.1938. After ascertaining the rate of interest and the market price, the value of the property is worked out. In probate cases the principles of the C.F. Act and not the Land Acquisitⁿ Act, are applicable. Whether it be under the L.A. Act or in probate cases, the question to be determined is the value of the property. The value of the properties under dispute on the date of the death of the testator may be arrived at as stated above.

To have the matter placed on an intelligible and definite footing as to the mode of valuation of properties in mufassal, ~~the~~ and that the rate of Capitalisatⁿ arises in all probate cases involving a principle of great importance, the ~~G.P.~~ Collector, agrees with the G.P. Mangalore and recommends to take the matter in revision to the High Court, Madras.

The file may be sent u.o. to the G.P. Madras for his opinion whether it is worth while to file an appeal and if so to ^{revise} ~~submit~~ draft grounds of appeal ~~approved~~.

R
27/11/41

5M 21 24 of (F)

14 39 4 of 7)

property. There are no clear orders or decisions of Courts as to how the value at the time of abutting for probate should be worked out. The judgment of the Honble Mr Justice Girdle has been held to apply only to the valuation of buildings in the city of Madras. G.O. No 3801 Home dt 14.9.40 which was issued with reference to this judgment was communicated only to the Colly of Madras.

The usual principle adopted in valuing lands in the unimproved is to take into account the market value of similar lands in the ~~vicinity~~ vicinity ^{information regarding}. It is only in cases where the market value of similar lands in the vicinity is not available that there will be difficulty in valuation of lands. Such cases will be rare.

In the present case all the items of immovable property except 3 items are situated within the Mangalore municipality. In the case of buildings the petitioner has made a deduction of two months' rent on account of repairs and has calculated the net income from the property at 5%. As regards land.

net income at 6%.

In land acquisition cases the cost of ordinary repairs which can be deducted for purposes of valuation has been fixed by the High Court at one month's rent. The Commissioner has adopted two month's rent in his valuation.

Attention is invited to the amendment to the Land Acquisition Manual issued in

G.O. No. Ms 591 Rev d 4-3-38. With reference Ht 191(P)

to this G.O. the Commissioner has capitalised the

net income at 5%.

He reports that the practice prevailing in his ^{in mortgage cases} ~~district~~ is to capitalise

p 12/1

the net income from the properties at 5%

and that the District Judge has adopted 5%

5 1/2% and 6% in such cases as there was

no definite principle governing the matter.

In G.S. No 2/40 the District Judge gave

Ht 9.11 2(L)

a decision adopting 5%. In G.S. No 62/40

(present case) however the Court declined

Ht 578(L)

to adopt the principle. The Commissioner also

adds that in some other cases also the

Court declined to adopt the principle.

p 2-1/2

Just as in the case of valuation of buildings

in the Madras City the principle to be

adopted in valuation has been settled

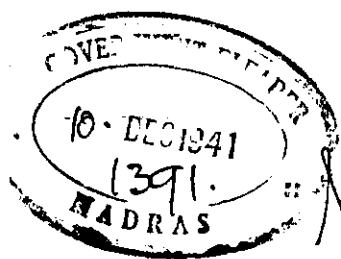
by the judgment of the Honble the Justice

Ht 21 241 of F.

Gentle. It is desirable to obtain a

definite ruling from the High Court regarding the valuation of lands and buildings in the mufassal. It is only very rarely that the question of lands ~~and buildings~~ in which market value of similar lands in the mufassal is not ~~be~~ available will arise. It seems better to adopt in such cases the ~~same~~ principle of valuation adopted in land acquisition cases.

It is submitted that the file may be sent to the G.P. Madras R.O. and he may be requested to state whether an appeal can be filed with any chance of success and if so to scrutinise the draft grounds of appeal submitted by the collector and revise them if necessary.



9/12/41

6/12/41

U.O.L. 5758/41 89-12-41

To the G. P. Madras.

With encls as per list on p. 1

Appeal time
E + time on 7.1.42 173

Opinion N2 53 D 20.12.41 From the G. P. Madras. p134 J.S.

To Joint Secy please see the letter at the 1-24.

(with two
92ks)

2/ The G.P. Madras who was
requested ^{unofficially} to state ~~no states~~ whether an
appeal may be filed with success, states
that no appeal lies against the order of the
Dt. Judge in view of Sec: 19 H(7) of the C.F. Act
and J.L.R. 56. Madras. 744.

p54.

p208 E.A. 2

E.A. 2

ibid

Sec: 19 H (7) of the C.F. Act lays
down that the finding of the Court recorded
under sub Sec: 5 shall be final. The object
of Sec: 19 H of the C.F. Act is to provide for
checking the valuation of property in respect
of which applicatⁿ has been made to any
Court for probate or letters of Administration.
When the enquiry has been completed and the
Coll^r finds that the pet^r for probate does not
amend the valuation he should move the Court
to make an enquiry. The Court records a finding
and ~~his~~ ^{its} finding will be final. It is presumed
that it is final so far as the pet^r is concerned.
~~but does not bar the Court from preferring an
appeal against the Master's order in Madras as
otherwise there will be loss of revenue to Govt.~~

p204-205 B.N.W.

The second authority quoted by the
G.P. Madras is J.L.R. 56. Madras. In the case
referred to by the G.P. a revision petition was
filed against a decision of the Sub. Judge of

Putup

p 748 32 R 56 Madras
(1 - 114)

Kumbakonam holding that the Court fee paid on a plaint was sufficient. It was decided that the High Court has no powers of revision either under Sec. 115 C.P.C or under Sec. 107 of the Govt of India Act. This decision is applicable to Court fee paid in Suits and ~~it is ^{the G.P. is of the opinion} ~~is~~ ~~known~~ whether it applies to probate Cases.~~

~~However~~ As the G.P. is of the opinion that no appeal lies against the order of the Dist Judge. the ~~Collr~~ ^{may be informed accordingly} Board may agree with him. The Collector may be informed that no appeal or revision need be filed against the decision of the Dist Judge S. Kanana in O.S. NO 62/40

vt 1-19(4)

In
26/12/41

2-1-42

M3

I agree.
In a case it would be unlikely that the High Court could or would invinciate the of the main principle which could be applied. What is the value of a property now with a world war going on? It is fine guess work. One can only know what income a building or a land is bringing in now. But how can say what will be the income 2 years

hence, whether it will be more or less. So it
is quite to expect the High Comd to see in it
the future. If we deal with the matter
by not putting it on the 'ready' list for
a number of years, possibly some will be
letting off

5/1/42 ✓

To Joint Secy

Draft Submitted.

DL
5/1/42
in
5/1/42

J
5-1-42 ✓

Joint Secy.

5 - JAN 1942

f.s.

B.P.No. **Mis: 39**
Dated **5th January 1942**

Single Member
~~Two Members~~
~~Full Board.~~

I-A. A.L.S. Assistant Secretary J.S. Secy. ~~M~~ ~~M~~ ~~M~~
& L.R. L.R. Irrig- Sep. 3 2 1
gation. Rev.

1.

1. Open file
seen by

2. Final draft
seen by

3. Now circu-
lated to

4. Initials. *8h*
871

Gr
9.1.42
Passed for record.

~~Secretary~~

JointSecretary.

A.S. (L.R.)

A.S. (Irrign.)

A.S. (Sep.Rev.)

A.S. & L.R.

I-A.

92
8/1/42
871

Note:- Entries not required to be scored out.